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No. 97-2072

In The

Supreme Court of the United States

October Term, 1997

TURBOMECA, S.A., and TURBOMECA ENGINE COMPANY,

Petitioners,

vs.

KYONG JU BARNETT, Individually and as Guardian Ad Litem and Next Friend of JESSIE MORGAN BARNETT and MIA KYONG BARNETT, minor children; JAMES S. BARNETT, SR.; WANDA BARNETT; and STATE OF MISSOURI,

Respondents.

On Petition for Writ of Certiorari to the Missouri Court of Appeals, Western District

BRIEF IN OPPOSITION FOR RESPONDENTS JAMES S. BARNETT, SR. AND WANDA L. BARNETT

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JURISDICTIONAL STATEMENT

Petitioners have invoked the jurisdiction of the Supreme Court under 28 U.S.C. § 1257(a) without advising the Court of the facts and circumstances which demonstrate that there is no actual case or controversy for this Court to resolve. This case is moot for the particular reasons that will be set forth in Point I of this brief.

STATEMENT OF THE CASE

A. The Petitioners and Their Relationship

Petitioner Turbomeca, S.A. ("TSA") and Turbomeca Engine Corp. ("TEC") are closely affiliated corporations. TSA designs, manufacturers, sells and services turboshaft (gas turbine) engines through a worldwide network which includes North America. TEC was the corporate affiliate of TSA that sold, serviced and overhauled Turbomeca engines in the United States. (Ex. 281). Both TSA and TEC are owned by Societe Labinal, a holding company. (Tr. Cocheteux 9-11).

At all material times, TSA exercised *de facto* control over the business operations of TEC as evidenced by the following testimony of Jean Cocheteux, its chief executive officer:

> A. . . . But, in fact, if you look at the operations of TEC, the-the flow of directives comes from Turbomeca France.
>
> Q. All right so Turbomeca France exercises control and direction over the business of Turbomeca Engine Corporation of Texas?
>
> A. Yes.

(Tr. Cocheteux 10).

Both TSA and TEC were covered by the same policy of liability insurance that had liability limits of approximately $1,000,000,000. (App. D - pp. 17a-18a). In a proceeding before the trial court, TSA's and TEC's attorney regarded that sum as a surrogate for the net worth of the two companies for purposes of the Barnett case. (App. E - pp. 19a-21a). The payment of the $40,000,000 judgment in this case and the posting of the supersedeas bond in the sum of $134,000,000,000 to secure payment of the judgment were done under that insurance policy.

B. Relevant Background Facts

James Barnett, Jr., the only son of Respondents James Barnett, Sr. and Wanda Barnett, died on May 27, 1993 as a direct result of the explosive in-flight failure of the Turbomeca engine that powered the air ambulance he was piloting. That helicopter known as Life Flight 2 (N728LF) was operated under a joint venture between two hospitals in Kansas City, Missouri. The patient being transported to the hospital in the helicopter was killed and the other two members of the flight crew were permanently and totally disabled.

The engine failure in Life Flight 2 was caused by a defectively designed part known as TU76. TSA and TEC had known that this part was defective since June, 1986, based on an intensive failure mode and effects analysis conducted by TSA in France known as the "Saviot" report. That analysis proved that the design geometry and metallic composition were defective. The analysis further proved that the failure of the part could occur at any time during the rated use or time between overhaul (TBO) of the whole engine which was at that time 2000 hours. (P.Ex.6). TSA and TEC recognized that these defects presented a serious safety problem because the failure of the part could cause an explosive in-flight engine failure.[1]

1. Based on the analysis, TSA's chief engineer, Alain Calemard, testified they knew that they had "a serious safety problem on our hands" constituting "a rather alarming situation." (Tr. Calemard 441; 443-444).

Instead of re-designing TU76 or adequately and honestly warning consumers of the defects, TSA continued business as usual and for competitive, commercial reasons actually increased the TBO from 2000 to 2500 hours. (Tr. Meliet 160-161; Calemard 91; 481-482). It was undeterred by a series of TU76 induced in-flight failures, one of which resulted in serious ("grave") injuries to at least four persons in a single crash. Before the crash of Life Flight 2 on May 27, 1993, there had been at least seven accidents as a result of TU-76 in-flight failures, several with total destruction of the helicopter.[2]

TSA's corporate attitude concerning TU76 was summarized in the following testimony of Mr. Jean Meliet, world-wide customer support technical manager:

> Q. Now notwithstanding the fact you know you have a serious problem with TU76, you still keep manufacturing Arriel engines with TU76 modifications in them without making changes, isn't that true, in design?
>
> A. Yes.
>
> Q. And you keep manufacturing them and selling them without changing the metal, correct?
>
> A. Yes.
>
> * * *
>
> Q. And that goes out on new aircraft and when people bring their engines back for overhaul, TU76 with this weak metal gets put right back in them, correct?

---

2. Dr. Alan Epstein, the Director of MIT's turbine engine laboratory with experience with military and civilian aircraft, described this as an "enormous number" in the field of aviation. (Tr. 1507).

A. Yes.

* * *

Q. And during that period of time the number of these cracks and the ruptures and the incidents and accidents starts mounting, doesn't it?

A. Yes.

* * *

Q. Nonetheless, the production line keeps rolling and we keep making TU76 modified engines for use in the world, correct?

A. Yes.

Q. Including these United States?

A. Yes.

* * *

Q. Okay so we know a third of these engines with this part in it with a bad metal are coming here to this country, correct?

A. Yes.

(Tr. Meliet 69-70; 73-74). The effects of this admitted serious safety problem mounted to the point that in the same week of the Life Flight 2 crash there were two other serious TU76 in-flight failures in the United States. (Tr. Cocheteux 79).

When Mr. Meliet was asked why TSA made a conscious decision not to disclose the precise nature and seriousness of the dangers of TU76 and its alarming safety history to Turbomeca engine users, he stated that he "did not want to disturb them" with such information because he knew it might affect engine sales. (Tr. Meliet 163-164; 310-313).[3]

Ironically, the same day of the crash of Life Flight 2, TSA completed its second numerical count of TU76 failures and cracks in engines examined in France. (P.Exs.7 and 8). These studies showed a defect rate of approximately 6% for TU76 equipped engines. In the subsequent NTSB and FAA investigation of the Life Flight 2 crash, neither TSA nor TEC disclosed the results of either analysis to the U.S. safety authorities although they had been asked to furnish "all details of any known incidents, accidents or problems and any history of discrepancies discovered at overhaul related to this part of the engine." (P.Ex. 172). Likewise, the "Saviot" report was not disclosed to the U.S. authorities.

The jury hearing the evidence in this case found that TSA and TEC's conduct evidenced a conscious disregard for human safety under appropriate instructions[4] and assessed punitive damages. Those damages were subsequently reduced and

3. No disclosure by any means of the existence of the built-in TU76 defects was ever made. The deceptive and misleading service letters sent out to users simply advised them to listen for any "rubbing noise", a procedure known by TSA and TEC to be wholly ineffective. No in-flight failure had been preceded by any perceptible rubbing noise. Moreover, the defective part was housed in a sealed module and could only be visibly inspected by TSA or TEC at overhaul. No disclosure was made that TU76 broke apart in flight and caused explosive engine shutdowns resulting in several crashes and injuries

4. *See Bennett v. Owens-Corning Fiberglass Corp.*, 896 S.W. 2d 464 (Mo. banc 1995) conforming Missouri instructional practice to the requirements of *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991).

remitted by the trial court and were further reduced and remitted by the Missouri Court of Appeals, Western District as set forth in its opinion appended to Petitioners' Brief. The Respondents accepted the remittitur ordered by that court.

C. Subsequent Proceedings

On April 28, 1998, the Petitioners, without first requesting a stay or seeking a reduction and continuation of their supersedeas bond, paid the remitted judgment plus interest thereon totaling $40,554,745 in separate checks to the Respondents as allocated by the Court.

As a condition for this payment, Petitioners required all Respondents to execute in open court the appended Acknowledgment of Satisfaction and Waiver of Attorney's Liens. (App. A - pp. 1a-5a; App. B - pp. 6a-11a). By that document, which was prepared and approved by Petitioners' attorneys, the Respondents acknowledged that the "tender of *payment shall forever release and discharge defendants* [TSA and TEC] *from any further obligations in this case* except court costs . . .". (Emphasis added).

After paying the judgment in this case and receiving the foregoing release of all claims and satisfaction of judgment, the Petitioners then filed their new brief in the Supreme Court of Missouri in *Letz v. Turbomeca Engine Corporation, et al.*, No. 80558. In support of that brief they attached the judgment entered in this case on April 28, 1998 and expressly took the position that their payment of the *Barnett* judgment entitled them to an absolute credit against the *Letz* judgment in the sum of $26,500,000 under the provisions of § 510.263.4, R.S. Mo. (*See* Apdx. pp. A-10-12).

SUMMARY OF REASONS FOR DENYING THE WRIT

This case is moot. The underlying cause of action has been extinguished by the execution of the release and satisfaction of judgment appended hereto in which the Respondents released and discharged the Petitioners from any further liability in this case. In recognition of the finality of the release and the satisfaction of judgment in this case and before filing the Petition herein, the Petitioners claimed the benefit of all sums paid in this case as an absolute credit against the punitive damages awarded in a companion case now on appeal to the Supreme Court of Missouri. There is thus no case or controversy remaining to support this Court's jurisdiction under 28 U.S.C. § 1257(a).

Apart from those considerations, there is no novel or legitimate constitutional issue presented in the Petition. The court below made a straightforward analysis of this case under the due process principles set forth recently in *BMW of North America v. Gore*, 517 U.S. 559 (1996), and correctly concluded that the reprehensible and egregious conduct of Petitioners shown of record warranted the imposition of substantial punitive damages under the Missouri wrongful death statute. The Petitioners had full advance notice that their persistent willful and reckless conduct affecting the health and safety of Missouri citizens could subject them to punitive damages when people were killed or injured as a result of that type of conduct. Petitioners' tortious conduct was unlawful in every state in the Union and elsewhere. The payment of the award did not impermissibly affect the financial condition of the Petitioners and in no way was violative of the Excess Fines Clause of the Eighth Amendment.

REASONS FOR DENYING THE WRIT

I.

THE WRIT SHOULD BE DENIED BECAUSE THERE IS NO LONGER A CASE OR CONTROVERSY FOR THE SUPREME COURT TO RESOLVE BASED ON THE FOLLOWING GROUNDS:

A. The Execution Of The Sworn Release Discharging Petitioners From All Other Obligations To Respondents For The Wrongful Death Of Their Son And Their Acceptance Of Payment Of The Judgment Make This Action Moot.

The Petitioners did not bring to this Court's attention the appended Acknowledgment of Satisfaction of Judgment and Waiver of Attorney's Liens executed on April 28, 1998 by which the Respondents released their claims against Petitioners. (App. A - pp. 1a-5a) . That release destroys any jurisdiction in this Court. Under settled Missouri law, instigating the execution of a general release from an opposing party without a reservation of rights operates as an estoppel as a matter of law and constitutes a settlement of all claims precluding further judicial action.[5] *Farmer v. Arnold*, 371 S.W. 2d 265, 269 (Mo. 1963) makes the point this way:

> When the plaintiff Farmer paid Arnold $50 for a release, and regardless of whether the release

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5. By executing the general release and accepting payment in full satisfaction of the judgment the Respondents did not simply extinguish their cause of action against the Petitioners. Respondents' acceptance of their allocated portion of the judgment caused them to incur immediate income tax liability for the punitive damage component of that judgment. They clearly have detrimentally relied on the finality created by the general release and payment of the judgment.

> constituted the entire contract, *the release was executed at the instigation of Farmer for his own immediate needs and benefit and he is now estopped* after rendering Arnold all but defenseless *from prosecuting one side of a tort action arising out of a single transaction.*

(Emphasis added).

Similarly, the Supreme Court of Missouri in *Lugena v. Hanna*, 420 S.W. 2d 335, 341 (Mo. 1967), recognized that litigation is ended when a party instigates and accepts a release in his favor whether it be based on grounds of estoppel, waiver, accord and satisfaction or other legal doctrines. Under Missouri law, a release and payment precludes further action between the parties as a matter of law because the cause of action has been extinguished.[6] There is thus no longer a viable or justiciable case or controversy between Petitioners and Respondents to support this Court's jurisdiction. The underlying cause of action has been extinguished at the instigation of the Petitioners. This case is moot.

Petitioners attempt to evade the mootness issue by citing the dicta in *County of Dakota v. Glidden*, 113 U.S. 222, 224

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6. Both *Farmer v. Arnold* and *Lugena v. Hanna*, *supra*, affirmed summary judgments giving full preclusive effects to the releases in those cases. *Lugena v. Hanna* at 341 captures the essence of the effect of the release as follows:

> in the absence of words in the operative part of a general release which indicate an intention to limit or restrict its effect, it must be concluded that the instrument was contemplated and intended to be *a complete settlement of all matters between the parties to the release.*

(Emphasis added).

(1885), stating the general rule that payment of a judgment, standing alone, does not waive the payor's right to appeal. Petitioners' reliance on that case is misplaced in view of the fact that Petitioner's sought and obtained a release and discharge of all of their liability to Respondents *in addition to* paying the judgment.

The Petitioners in this case thus stand on the same footing as the Appellant in *County of Dakota v. Glidden*, *supra*. There the court determined that the parties had effectively settled their dispute which extinguished the cause of action and the judgment based on it. The Court therefore dismissed the appeal as moot when it was brought to its attention that the underlying cause of action was extinguished.

In this case the general release executed by the Respondents constituted a complete settlement of this case under Missouri law. The resulting extinguishment of their cause of action mooted this case. There is thus no case or controversy left for this Court to resolve and the writ should be denied on the authority of *County of Dakota v. Glidden* at 225 and the cases cited therein.[7]

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7. In *County of Dakota v. Glidden* at 224-225 the Court saw through the argument that the appellant had merely paid the judgment to stay an execution and noted: "But what was done was a different thing than that." That is also true in this case.

B. The Case Is Moot Because The Petitioners Have Accepted The Benefit Arising From The Release And Payment Of The Judgment In This Case By Asserting To The Supreme Court Of Missouri In *Letz v. Turbomeca Engine Corporation, et al.*, No. 80558 That They Are Entitled To A $26,500,000 Credit Against The Punitive Damages In That Case Under Section 510.263.4, R.S. Mo.

The Petitioners also did not disclose to this Court that following the execution of the general release and the payment of the judgment, Petitioners on May 6, 1998 filed a new brief in the Supreme Court of Missouri in the *Letz* case asserting as a matter of law that they were entitled to a $26,500,000 credit against the *Letz* judgment under Section 510.263.4, R.S. Mo. by virtue of the payment and satisfaction of the *Barnett* judgment.[8]

The acceptance of the benefits of the finality and satisfaction of the *Barnett* judgment in the *Letz* case has adverse jurisdictional consequences for Petitioners in this case. Dismissal of the writ for certiorari is fully warranted based upon the recognized jurisdictional principle that one who accepts the fruits or benefits of a judgment may not appeal from it. *See Tech Hills II Associates v. Phoenix Home Life Mut. Ins. Co.*, 5 F.3d 963, 970 (6th Cir. 1993) and the cases cited therein.

Petitioners cannot simultaneously attack the *Barnett* judgment in this Court and rely on it in the Supreme Court of Missouri to be relieved of the $26,500,000 judgment for punitive damages in that case. Petitioners legally bought out and

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8. Petitioners' baseless argument that it is subject to a "double whammy" under Section 510.263.4, R.S. Mo. will be dealt with under Point II.D., below. Suffice it here to point out that Petitioners are seeking the protection and benefit of that statute in *Letz* based on the payment and finality of the *Barnett* judgment.

extinguished the Barnetts' interest in this case so that they could perfect their right to a credit under Section 510.263.4, R.S. Mo. in the *Letz* case with the consequence that the jurisdiction of this Court has been similarly extinguished.

II.

THE PETITIONERS HAVE NOT BEEN DENIED DUE PROCESS AS A RESULT OF THE PUNITIVE DAMAGE JUDGMENT OF $26,500,000.

There are no important due process issues presented in this case nor any Rule 10 considerations present to justify granting a writ of certiorari. The court below expressly applied the Due Process standards recently enunciated by this Court in *BMW of North America v. Gore*, 517 U.S. 559 (1996) and related decisions to an unique, egregious case of tort liability involving a persistent course of wilful conduct occurring over a seven year period. The Missouri Court of Appeals' analysis of the facts under *BMW* overwhelmingly supports the reduced punitive award in this case.

A. Petitioners Knew That Their Tortious Conduct Involving A Conscious Disregard For Human Safety Could Subject Them To Punitive Or Aggravating Circumstances Damages For Causing A Wrongful Death In Missouri.

Stripped to the essentials, the Petitioners argue that as far back as 1986 that they have believed they could get away with what the Missouri Court of Appeals determined was "unparalleled" tortious conduct without suffering significant punitive consequences.[9] They

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9. TU76's were known by Petitioners to break apart in-flight, detonate, stop engines and cause crashes and injuries. The continuing manufacture, sale and servicing for almost seven years of such a known, dangerous product and the active concealment of its dangerous characteristics from users and

(Cont'd)

now claim ignorance of a long line of Missouri cases holding damages for "aggravating circumstances" under Section 537.090, R.S. Mo. are punitive in character.[10] In view of those cases there is no substance to their claim that they had no notice that they could

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(Cont'd)
safety authorities makes this case unique in U.S. product liability experience. In no case has non-disclosure of a serious safety defect been so closely linked to sales. In no case has a deliberate decision been made to substantially increase the risk of product failure and injury by extending the time between overhaul or repair for brutally commercial or competitive reasons. *Cf. BMW of North America v. Gore, supra*, involving no such reckless disregard for the health and safety of others, concealment or improper motives.

10. For at least 100 years before the Life Flight 2 crash it was recognized that punitive or exemplary damages were recoverable under the Missouri wrongful death statute if aggravating circumstances were shown to exist. In *Haehl v. Wabash R. Co.*, 24 S.W. 737, 741 (Mo. 1893) the Supreme Court of Missouri stated:

> It needs no argument to show that under this law, in a proper case, exemplary damages may be given. It has been so held or assumed as a self-evident proposition in every case in which the attention of this Court has been called since the law was first enacted in 1855.

Under this law, damages akin to punitive damages were previously upheld in crashes of aircraft upon the requisite showing of a conscious disregard or reckless indifference to human safety. *Weast v. Festus Flying Serv.*, 680 S.W. 2d 262, 267 (Mo. App. 1984) (removal of an anti-ice pump three weeks before the crash, failure to record the removal and dispatch into potentially icy conditions); *Blum v. Airport Term. Serv., Inc.*, 762 S.W. 2d 67, 74 (Mo. App. 1988) (misfueling of aircraft by use of jet fuel in a piston engine by an employee who was on the job for only one week and received inadequate training). TSA and TEC were thus on notice that isolated acts of misconduct, much less a nearly seven year continuing course of tortious conduct, would subject them to the equivalent of punitive damages when that conduct resulted in a wrongful death in Missouri. Missouri was not a "safe harbor" for Petitioners' reprehensible conduct that directly impacted the health and safety of its citizens.

be subjected to when people were killed in Missouri as a result of a long running course of life-endangering tortious conduct.

Petitioners further equivocally state at page 10 of the brief that TSA "may not even been aware that any of its engines had found their way into Missouri." That is a misstatement of fact. TSA's advertising and promotional brochure used to promote sales in the U.S. (P.Ex. 281) contains a photograph of a helicopter in use as an air ambulance. The identifying number on that helicopter is N728LF. That helicopter was Life Flight 2 shown flying in the State of Missouri.

B. The Petitioners' Long-Term Wilful Conduct Was Not Lawful In Any State In The United States Or Elsewhere And Is Not Shielded By The Due Process Clause.

In an effort to trivialize the effects of their wilful conduct, Petitioners equate their self-described "minimal" tortious behavior with that shown in the *BMW* case. Petitioners suggest that not all states or jurisdictions would regard its life-endangering conduct as illegal or unlawful. Accordingly, they argue that the Missouri courts did not accord them due process by allowing evidence of the world-wide, harmful effects of their centralized decision to keep selling a known defective part common to all engines wherever sold or used in the world. They cite no authority which even remotely suggests that the following conduct is lawful anywhere in the world, much less in France:

1. Continued sale and servicing for almost seven years of a known, defective part that could unpredictably, prematurely, and explosively fail in flight.

2. Continued sale and servicing of such a defective part with knowledge of an increasing rate of failures resulting

in crashes involving serious personal injuries and total destruction of helicopters.

3. Deliberate concealment and failure to warn buyers and users of what Turbomeca management regarded as a "serious safety problem" because such warning might adversely affect sales.

4. Extension of the TBO from 2000 hours to 2500 hours to keep up with their competition with knowledge of the serious TU76 product defect that was literally built into its engines.

5. Deliberate concealment of the true frequency and magnitude of the TU76 produce failures and consequences from U.S. safety authorities after the crash of Life Flight 2.

There is obviously a vast difference between universally condemned tortious conduct that can kill and injure people and the repainting or touch-ups of luxury automobiles. *BMW* cannot reasonably be stretched to shield the reprehensible conduct shown of record in this case. Business decisions taken in the executive offices of TSA with a conscious disregard for human safety had a direct and foreseeable effect on the life of James Barnett, Jr., and the other victims in Life Flight 2. Those corporate decisions resulted in identically caused engine failures, injuries and crashes in the U.S. and elsewhere.

Those corporate decisions produced the only truly unlawful extraterritorial effect in this case, not the punitive damages merited by those decisions.

C. Neither Petitioners' Business Operations Nor Their Finances Have Been Affected By The Punitive Damages Assessed Against Them.

The Petitioners have failed to bring to the Court's attention that both of them were protected by a liability insurance policy with liability limits of approximately $1,000,000,000 for all damages arising out of this case. It is clear from the record below that Petitioners' considered this liability insurance as a component of the net worth of both of the closely related entities. In resisting the production of net worth information by way of discovery, here is what one of their witnesses had to say at a hearing held below at page 37 of the hearing transcript following a request for net worth information.[11] (App. E - p. 21a):

> THE WITNESS: Your Honor, I wonder if we could cut through this if I get information from the broker which shows that the — instead of it being five billion french francs its 4.99 billion, *is there any point in chasing this net worth question around*?

(Emphasis added).

The net worth issue presented on this appeal is, in any event, makeweight.[12] Contrary to Petitioners' brief, the award below has not been "financially ruinous" for them nor have they been put out of business. They were fully protected by

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11. This hearing was applicable in all Life Flight 2 cases based on the case consolidation order for discovery purposes.

12. The concurring opinion in *BMW of North America v. Gore*, *supra* at 591, recognized that consideration of a defendant's wealth or net worth is not necessarily intended to act as a significant constraint on punitive awards in any event.

insurance. The net worth point raised by Petitioners is calculated solely to divert the Court's attention away from the recognized controlling factor in this case — the judicially determined reprehensibility of their conduct under *BMW* in relation to other appropriate factors. (Petitioners' Apdx. pp. A-39-50). The enormity of Petitioners' conduct fully supports the judicially reduced punitive award in this case.

D. There Is No Live Issue In This Case That Petitioners Have Been Subjected To Any Impermissible Cumulative Punishment Based On The *Letz* Case.

As noted above, the Petitioners are in fact seeking the available protection of a statutory credit of $26,500,000 against the punitive damages in the *Letz* judgment by virtue of the payment and satisfaction of the Barnett judgment under the very same Missouri statute they erroneously claim subjects them to "a double whammy", Section 510.263.4, R.S. Mo. Their entitlement to such a statutory credit is now before the Supreme Court of Missouri. The asserted issue of "cumulative punishment" can only arise appropriately in that case; it is a non-issue in this one. They have paid the judgment in this case and taken a release which has extinguished the Respondents' cause of action. If they do not obtain a credit from the Supreme Court of Missouri in the *Letz* case in these circumstances, the asserted issue of "cumulative punishment" will then, but only then, be ripe for a petition to this Court in that case.

III.

THE EXCESS FINES CLAUSE OF THE EIGHTH AMENDMENT DOES NOT APPLY TO CIVIL ACTIONS FOR DAMAGES BROUGHT AND MAINTAINED BY PRIVATE LITIGANTS.

This Court has never applied the Eighth Amendment's Excess Fines Clause to a civil action. There is no compelling reason to do so in a civil action for actual and punitive damages brought by private litigants where due process and fairness is already afforded under the standards articulated in *BMW of North America v. Gore*, *supra*, and *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991). That is true notwithstanding the fact that a State may be a passive beneficiary of a portion of punitive damages. The Eighth Amendment's Excess Fines Clause should appropriately be reserved for fines levied directly by the Government as punishment for a criminal offense. *See United States v. Bajakajian*, __ U.S. __, 118 S. Ct. 2028 (1998).

The Petitioners implicitly concede the correctness of this analysis by simply re-arguing their due process contentions under this point.

CONCLUSION

For each of the reasons set forth in Respondents James Barnett, Sr. and Wanda Barnett's Brief, this Court should deny the Petition for Writ of Certiorari filed by TSA and TEC.

Respectfully submitted,

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Attorneys for Respondents
James S. Barnett, Sr. and
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APPENDIX

APPENDIX A — ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT AND WAIVER OF ATTORNEY'S LIENS FILED APRIL 28, 1998

IN THE CIRCUIT COURT OF
JACKSON COUNTY, MISSOURI
AT KANSAS CITY

CASE NO.: CV93-24644

DIVISION 8

KYONG JU BARNETT, et al.,

PLAINTIFFS

V.

LA SOCIÉTÉ ANONYME TURBOMECA FRANCÉ A/K/A TURBOMECA, S.A., et al.,

DEFENDANTS.

ACKNOWLEDGMENT SATISFACTION OF JUDGMENT AND WAIVER OF ATTORNEY'S LIENS

Plaintiffs James Barnett, Sr. and Wanda Barnett, and their attorneys of record, and each of them, pursuant to Supreme Court Rule 74.11, RSMo 511.570 and RSMo 537.675, do hereby acknowledge that the final money judgment entered in their favor against the defendants herein on April 28, 1998, in this matter has been fully and finally satisfied and that no further action in this case is required of defendants for any purpose. Defendants' tender

of payment shall forever release and discharge defendants from any further obligations in this case except payment of court costs as determined in the ordinary course by the office of the Clerk of the Circuit Court of Jackson County, Missouri. Said plaintiffs and their attorneys further state that all liens for attorney's fees and expenses be and hereby are expressly waived in this matter.
APPROVED AND ACKNOWLEDGED:

Dated: 4-28-98 — s/ James S. Barnett, Sr.
James Barnett, Sr.

Dated: 4-28-98 — s/ Wanda L. Barnett
Wanda L. Barnett

Dated: 4-28-98 — s/ Duke Ponick, Jr.
Duke Ponick, Jr.

Dated: 4/28/98 — s/ John J. Williams III
John J. Williams, III for himself and
Slagle Bernard & Gorman, LLC

ATTORNEYS FOR PLAINTIFFS JAMES BARNETT, SR. AND WANDA BARNETT

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

On this 28 day of April, 1998, before me, appeared James Barnett, Sr., to me personally known, who being by me duly sworn, did say that he has read the foregoing Acknowledgment of Satisfaction of Judgment and Waiver of Attorney's Liens, that

the facts set forth therein are true and correct and that he has signed the same as his free act and will.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

s/ Teresa A. Shell
Notary Public

My Commissions Expires:

[stamp] TERESA A. SHELL
Notary Public — Notary Seal
STATE OF MISSOURI
Platte County
My Commission Expires: April 9, 2000 [stamp]

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

On this 28 of April, 1998, before me, appeared Wanda Barnett, to me personally known, who being by me duly sworn, did say that she has read the foregoing Acknowledgment of Satisfaction of Judgment and Waiver of Attorney's Liens, that the facts set forth therein are true and correct and that she has signed the same as her free act and will.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

Appendix A

s/ Teresa A. Shell
Notary Public

My Commission Expires:

[stamp] TERESA A. SHELL
Notary Public — Notary Seal
STATE OF MISSOURI
Platte County
My Commission Expires: April 9, 2000 [stamp]

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

On this 28 day of April, 1998, before me, appeared John J. Williams, III, to me personally known, who being by me duly sworn, did say that he has read the foregoing Acknowledgment of Satisfaction of Judgment and Waiver of Attorney's Liens, that the facts set forth therein are true and correct and that she has signed the same as his free act and will.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

s/ Teresa A. Shell
Notary Public

My Commission Expires:

[stamp] TERESA A. SHELL
Notary Public — Notary Seal
STATE OF MISSOURI
My Commission Expires: April 9, 2000 [stamp]

Appendix A

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

On this 28 day of April, 1998, before me, appeared Duke Ponick, Jr., to me personally known, who being by me duly sworn, did say that he has read the foregoing Acknowledgment of Satisfaction of Judgment and Waiver of Attorney's Liens, that the facts set forth therein are true and correct and that he has signed the same as his free act and will.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

s/ Teresa A. Shell
Notary Public

My Commission Expires:

[stamp] TERESA A. SHELL
Notary Public — Notary Seal
Platte County
STATE OF MISSOURI
My Commission Expires: April 9, 2000 [stamp]

APPENDIX B — EXCERPTS OF TRANSCRIPT OF PROCEEDINGS, DATED APRIL 28, 1998

IN THE CIRCUIT COURT OF
JACKSON COUNTY, MISSOURI
SIXTEENTH JUDICIAL CIRCUIT, DIVISION 8
HONORABLE LEE E. WELLS, JUDGE

No. CV93-24644

KYONG JU BARNETT, et al.,

Plaintiffs,

vs.

TURBOMECA ENGINE CORPORATION, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

On Tuesday, the 28th day of April, 1998, the above-entitled cause came on regularly for hearing before the honorable Lee E. Wells, Judge of Division 8 of the Sixteenth Judicial Circuit, at Kansas City.

APPEARANCES

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Ms. Anita Porte Robb
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Appendix B

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Attorneys for plaintiffs
Kyong Ju, Jesse, and Mia Barnett

1200 Main Street
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Attorneys for defendants

Mr. John J. Williams, III
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4600 Madison
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and

Mr. Duke W. Ponick, Jr.
Attorney at Law
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Kansas City, Missouri 64105
Attorneys for plaintiffs James and Wanda Barnett

Mr. Edward F. Downey
Mr. Douglas E. Nelson
Office of Attorney General
Supreme Court Building
P.O. Box 899
Jefferson City, Missouri 65102

* * *

[9] Honor, we've now signed and executed and are in the process of notarizing the acknowledgments.

Appendix B

At this time we would like to present to counsel for the defendants a fully executed and signed acknowledgment of satisfaction of judgment and waiver of attorneys' liens signed by Mrs. Barnett on behalf of minor child, Mia Barnett, and myself, and my law partner on behalf of our law firm, Your Honor.

MR. O'DEAR: We acknowledge receipt of this document.

MR ROBB: Also on behalf of Mrs. Kyong Ju Barnett, her son, Jesse Barnett, myself, and my law partner, Anita Robb, for our law firm, we present to counsel for defendant Turbomeca the acknowledgment of satisfaction of judgment and waiver of attorneys' liens, Your Honor.

MR. O'DEAR: Again, we acknowledge receipt of this document as well.

MR. WILLIAMS: If you will, we'll dispense with this ceremony of doing it in this fashion. I think Mr. and Mrs. Barnett are keeping in mind the reason that we're here in the first place was occasioned by the death of their son. They have executed the acknowledgment, and I think we can handle this in the routine fashion as far as exchanging the [10] checks.

THE COURT: You want the acknowledgment on the record of course?

MR. O'DEAR: Yes.

Your Honor, at this time the Turbomeca defendants would tender to Mr. Williams and Mr. Ponick on behalf of their clients, James Barnett, Sr. and Wanda Barnett, a check for $5,603,117, Check No. 2189581.

Appendix B

We also acknowledge on the record the receipt of an acknowledgment of satisfaction of judgment and waiver of attorneys' liens signed by James Barnett, Sr. and Wanda L. Barnett, Duke Ponick, Jr., and John Williams for himself, and Slagle, Bernard & Gorman, L.L.C. Is that correct, Mr. Williams?

MR. WILLIAMS: That's right. It's a professional association but I think we've done all right.

MR. O'DEAR: Your Honor, the last check that we have is to the State of Missouri.

Whoever is going to accept this on behalf of the State of Missouri, could you identify yourself?

MR. NELSON: Douglas E. Nelson for the State of Missouri, Your Honor.

Teresa, if you would be so kind to notarize ours, I would appreciate it.

* * *

[14] THE COURT: Yes.

MR. ROBB: Another administrative matter. We ask counsel for defendant to supply us with a copy of the executed satisfactions of judgment.

MR. O'DEAR: We would be happy to do so, and we'll make copies as soon as the hearing is over.

Appendix B

I would like to say too for the record, I'm presuming everybody is going to go to the bank this afternoon. There shouldn't be any reason why anybody doesn't have the money by this afternoon.

MR. ROBB: On behalf of our client, that's our intention, Your Honor.

MR. WILLIAMS: We are too, but I'm unfamiliar with the banking rules for clearing these checks.

MR. O'DEAR: All right.

MR. ROBB: Your Honor, on behalf of our clients, Kyong Ju, Jesse, and Mia Barnett, we ask this Court to sign the final judgment indicating that there has been satisfaction of that judgment in full, and then release and discharge the defendants other than the payment of court costs as reflected in the document.

THE COURT: Judgment has been executed and the costs will be taken care of by the cost department.

MR. WILLIAMS: Your Honor, if I may, I take it [15] the defendants have approved the form and content of the satisfaction of judgment since you supplied it to is that correct?

MR. O'DEAR: Oh, yes. Yes.

THE COURT: Are you going to file those with the Court?

MR. O'DEAR: Yes.

Appendix B

THE COURT: I want to thank everybody for the cooperation that's been shown in obtaining a final closure on this matter. It's been exceptional and I've appreciated all of the help that was received from all sides, and I'm delighted we're finally able to conclude matter.

Thank you.

We'll be in recess.

(Adjournment.)

APPENDIX C — SUBSTITUTE BRIEF FOR APPELLANTS, FILED MAY 6, 1998

IN THE
SUPREME COURT OF MISSOURI

No. 80558

JODIE A. LETZ, Individually and as Guardian Ad Litem and Next Friend of ERIC DAVID LETZ and CHRISTOPHER SCOTT LETZ, Minor children, and as Representative and Administratrix of the Estate of SHERRY ANN LETZ, Deceased,

Plaintiffs-Respondents,

v.

TURBOMECA ENGINE CORPORATION and TURBOMECA, S.A.,

Defendants-Appellants,

and

ROCKY MOUNTAIN HELICOPTERS, INC.,

Defendant.

Appeal from the Circuit Court of Jackson County,
Division 8
Hon. Lee E. Wells

SUBSTITUTE BRIEF FOR APPELLANTS

Appendix C

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David S. Slavkin #21712
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Attorneys for Appellants

* * *

Following 17 days of trial, the case was submitted to the jury on theories of strict liability, negligence, and failure to warn. Defendants objected to the submission of damages for aggravating circumstances (L.F. 478, 487; Tr. 3015), but the court submitted all theories of recovery and aggravating circumstances on a single verdict form, a practice condemned by this Court just two weeks later in *Bennett v. Owens-Corning Fiberglas Colp.*, 896 S.W.2d 464 (Mo. banc 1995).[2]

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2. In the *Barnett* case, which was tried after *Bennett*, the same judge submitted compensatory damages separately from aggravating circumstances damages. The total verdict in that case was $175,000,000 for compensatory damages and $175,000,000 for aggravating circumstances damages. On post-trial motions in *Barnett*, the trial court ordered a remittitur to $77.5 million. The Court of Appeals further reduced the judgment to $3,500,000 for compensatory and $26,500,000 for aggravating circumstances. This Court denied transfer in *Barnett* (No. 80559), and the plaintiffs in that case consented to the remittitur. This Court may take judicial notice of the final judgment in that case, which is reproduced in the Addendum to this brief. That judgment has now been satisfied, as the Circuit Court's records reflect.

Appendix C

After plaintiffs and RMH had solemnly stipulated before the jury that the TU-76 was defective (Tr. 911-12), plaintiffs' counsel told the jury in closing not to award any damages against RMH (Tr. 3120). The jury was also asked to assume that decedent had died instantly and not to award any damages for her pain and suffering (Tr. 3109).

* * *

We respectfully urge that the present case, if not reversed, is a textbook candidate for application of the principals underlying the doctrine of remittiur. And if this Court does not order a new trial, defendants are entitled to a credit of $26,500,000 against the punitive component of any surviving judgment under § 510.263.4 RSMo. by reason of the payment of that sum as punitive damages in *Barnett*.

CONCLUSION

For the reasons stated, the judgment of the Circuit Court of Jackson County should be reversed and the case remanded with directions to enter judgment for defendants on the issue of aggravating circumstances and to conduct a new trial on all other issues.

Appendix C

Respectfully submitted,

s/ Thomas C. Welsh
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May 6, 1998

APPENDIX D — EXCERPTS OF DECLARATIONS PAGE FOR LIABILITY INSURANCE POLICY NO. 93/14313 WITH LIABILITY LIMITS PAGE

FAUGERE & JUTHEAU

FAUGERE & JUTHEAU, S.A.
Société Anonyme de Couverage d'Assurance

* * *

NOTE DE COUVERTURE

Nous soussignés, FAUGERE & JUTHEAU S.A. confirmons avoir procèdé au placement des risques défines d'aprés

SOUSCRIPTEUR-ASSURE:	Société LIBINAL 5 Avenue Newton MOTIGNY LE BRETONNEUX — 78000 Agissant lant pour son compte que pour le compte des Sociétés qui loi sont affiliées et/ ou dans lesquelles elle dériendrail des intérès, et notamment: — TURBOMECA — TURBOMECA ENGINE CORPORATION
PERIODE:	12 Mois in effet du ler Janvier 1993 (O heure)
RISQUES GARANTIS:	(a) **PARTIE A: 75 % Partie de 100 %:**

Appendix D

— lère Ligue: 250.000.000 de Francs par occurrence et/ ou par année d'assurance, y compris la contrevaleur de US$ 100 Millions pour le risque d'Arrêt des Vols:

* REUNION AERIENNE/ UAP: 75 % partie de 100%.

Cette Assurance s'exerco suivant les Clauses.
Conditions et Exclusions de la Police
N° 93 14313 énúse par la REUNION AERIENNE

— **Zéine Kugye (Excess):** 4.750.000.000 de Francs par occurrence et/ou par année d'assurance, en complément et/ou après èpuisement de 250.000.000 FF par occurrence et/ou par année d'assurance.

* REUNION AERIENNE/ UAP: 32.50% partie de 100%
* AXA (AVIAFRANCE): 10.00% partie de 100%

APPENDIX E — EXCERPTS OF TRANSCRIPT OF PROCEEDINGS, DATED MAY 3, 1995

IN THE CIRCUIT COURT OF
JACKSON COUNTY, MISSOURI
SIXTEENTH JUDICIAL CIRCUIT, DIVISION 8
HONORABLE LEE E. WELLS, JUDGE

CV93-19156

JODIE LETZ, et al.,

Plaintiffs,

vs.

TURBOMECA ENGINE CORPORATION, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

On Wednesday, the 3rd day of May, 1995, the above-entitled cause came on regularly for hearing before the Honorable Lee E. Wells, Judge of Division 8 of the Sixteenth Judicial Circuit, at Kansas City (Jackson County)

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Appendix E

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Conservator for Letz children

* * *

[36] * * *

THE COURT: I think you should provide them with a net worth statement that is certified by some audit.

THE WITNESS: Your Honor's goal is to get this done expeditiously. I don't know who their auditors are. I wouldn't know how to go about getting that done expeditiously. I don't know who they are. I don't know how to get it expeditiously. It seems the expeditious way of resolving this net worth question is the way that I thought you and I understood one another before and that is if we have an annual report of Labinal which breaks out Turbomeca, S.A. and Turbomeca Engine Corporation, we'll give them the picture or give them a copy of the annual report if we have an extra one around. If we don't, we'll give them a picture of the pertinent portions.

MR. WILLIAMS: If, Your Honor, I may get my [37] two cents worth in. I assume the certified financial statements are a part of the auditing process which I assume applies in Europe as well as here. They have subsidiary balance statements for each of the family of the Labinal companies; and, again, it should be either in their hands or among the work papers of their auditors that have to certify the financial statements of the parent, and I'm confident that it would be in those records.

Appendix E

THE COURT: I would imagine they have that.

THE WITNESS: Your Honor, I wonder if we could cut through this if I get information from the broker which shows that the — instead of it being five billion French francs it's 4.99 billion, is there any point in chasing this net worth question around?

* * *